JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
San Francisco, California 94102-3688

Report Summary

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Elihu M. Berle, Chair
Hon. Lee Smalley Edmon, Chair, Alternative Dispute Resolution Subcommittee
Heather Anderson, Senior Attorney, 415-865-7691

DATE: August 29, 2003

SUBJECT: Alternative Dispute Resolution: Rules Relating to the Judicial Arbitration Program (amend Cal. Rules of Court, rules 225, 1580.3, 1603–1605, 1606, and 1612–1618; renumber and amend rules 1600–1600.1, 1601, and 1607–1611; and repeal rules 1600.5, 1602, and 1605.5) (Action Required)

Issue Statement
Currently the California Rules of Court relating to the judicial arbitration program (rules 1600–1618) contain out-of-date language and references, including references to municipal courts. The rules also contain provisions that do not reflect current court case management practices. In addition, pending Judicial Council–sponsored legislation (Assem. Bill 1712) would amend some of the statutory provisions relating to judicial arbitration, and the rules relating to the judicial arbitration program need to be amended to reflect those statutory changes.

Recommendation
The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2004:

1. Amend rule 225 to incorporate language similar to that in existing rule 1618 making a party who fails to give notice of settlement at least two days before a scheduled alternative dispute resolution (ADR) hearing or session responsible for paying the compensation of the ADR neutral; and

2. Amend rule 1580.3 to replace the arbitration administrative committee required in specified courts by existing rule 1603 with an alternative dispute resolution committee that has a broader membership and responsibilities.

3. Amend the rules relating to the judicial arbitration program (by amending rules 1603–1605, 1606, and 1612–1618; renumbering and amending rules 1600–1600.1, 1601, and 1607–1611; and repealing rules 1600.5, 1602, and 1605.5) to (a) eliminate outdated references and language; (b) reflect current case management practices; (c) reflect pending amendments to the judicial arbitration statutes that are likely to be adopted effective January 1, 2004; and (d) make the rules easier to understand.

The text of the amended rules is attached at pages 17–36.

Rationale for Recommendation

Rules 1600 through 1618 of the California Rules of Court set out the administration and procedures for the judicial arbitration program. While these rules have been amended periodically, they have not been updated since all of the trial courts unified, and therefore they contain outdated references to municipal courts. The rules also contain procedural provisions that have not been updated to reflect current court case management practices and procedures. The committee believes that these rules should be amended to eliminate outdated references and reflect current case management practices. In addition, rules 1609 and 1618 contain provisions regarding notifying the court about a settlement that differ from rule 225. The committee believes that these rules should be made consistent with each other. Finally, pending legislation, Assembly Bill 1712, would amend the statutes that establish the judicial arbitration program.[1] The committee believes that the rules relating the judicial arbitration should be amended to reflect these statutory changes so that updated rules go into effect at the same time as the amended statutes.

Alternative Actions Considered

The committee considered waiting to see if Assembly Bill 1712 is signed into law before developing rule amendments to correspond with the statutory changes in that bill. However, the committee understood that the outcome of the legislative process would be known by the time of the Judicial Council meeting and believed that it was preferable to be able to implement the rule amendments along with the statutory changes.

Comments From Interested Parties

These amendments were circulated as part of the spring 2003 comment process. Nine individuals or organizations submitted comments. Overall, two commentators agreed with the proposal, seven agreed only if the proposal were modified, and none disagreed with the proposal.[2]

[1] As of August 29, 2003, this bill has passed out of the Legislature and was on its way to the Governor. A copy of the relevant portions of the bill is attached for reference, beginning at page 58.

[2] A summary of the comments that were submitted, and the subcommittee responses to each, are set forth in the accompanying comment chart beginning on page 37.

None of the commentators raised any major concerns about these amendments. Commentators did submit a variety of suggestions concerning the specific language of some of the rules, many of which were incorporated into the proposal by the committee. These specific comments and the committee's responses are summarized in the body of the report and in the attached comment chart.

Implementation Requirements and Costs

Courts that currently have arbitration administrative committees under rule 1603 will need to broaden those committees into ADR committees under the amendments to rules 1580.3 and 1603. Courts may also have to modify or implement new procedures for enforcing parties' obligation to compensate ADR neutrals other than judicial arbitrators when the parties fail to provide adequate notice of settlement under the amendments to rule 225. There are likely to be some one-time administrative costs associated with making these changes.

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Issue Statement
Currently the California Rules of Court relating to the judicial arbitration program (rules 1600–1618) contain out-of-date language and references, including references to municipal courts, and provisions that do not reflect current court case management practices. In addition, pending Judicial Council–sponsored legislation (Assem. Bill 1712) would amend some of the statutory provisions relating to judicial arbitration, and the rules relating to the judicial arbitration program need to be amended to reflect those statutory changes.

Background
California statutes establish a court-connected, nonbinding arbitration program for civil cases valued at $50,000 or less, known as judicial arbitration (Code Civ. Proc., § 1141 et seq.). Rules 1600 through 1618 of the California Rules of Court set out the administrative structure and procedures for this program.

While these rules have been amended periodically, they have not been updated since all of the trial courts unified, and therefore they contain outdated references to municipal courts. These rules also contain procedural provisions that have not been updated to reflect current case management practices and procedures, as well as administrative

provisions that do not reflect the fact that many courts have not only judicial arbitration, but other alternative dispute resolution (ADR) programs, such as mediation.

In addition to these outdated provisions, the judicial arbitration rules contain provisions that overlap with provisions in some other rules. For example, rules 1609 and 1618 contain provisions on notifying the court about a settlement that differ from rule 225.

Finally, pending,[3] Judicial Council–sponsored legislation, Assembly Bill 1712, would amend the statutes that establish the judicial arbitration program to (1) delete outdated language; (2) reflect current trial court case management practices; (3) allow the court to set an arbitration hearing earlier than 210 days after the filing of the complaint where the parties have stipulated to such an earlier hearing, or where the parties have stipulated or the court has ordered that discovery will remain open after the arbitration hearing; and (4) clarify and simplify the statutory language. The committee believes that the rules relating to judicial arbitration should be amended to reflect these statutory changes so that updated rules go into effect at the same time as the amended statutes.

Proposed rule amendments and public comments

The rule amendments proposed by the committee would update the judicial arbitration rules to delete outdated references to the municipal courts, reflect current case management practices, and make the rules correspond with pending amendments to the judicial arbitration statutes. In order to make the rules easier to understand, some rules would be reorganized to consolidate provisions relating to the same topic and subdivision titles also would be added.

These amendments were circulated as SP-03-08 during the spring 2003 comment cycle. Nine individuals or organizations submitted comments. Overall, two commentators agreed with the proposal, seven agreed only if the proposal were modified, and none disagreed.

The main changes proposed, the principal substantive comments we received on those changes, and the committee's responses to those comments are summarized below.[4]

Make provisions of rules 225, 1609, and 1618 regarding notification of settlement consistent

Currently, rule 1618 makes *both parties* responsible for notifying the court of a settlement and for paying the arbitrator if timely notice of settlement is not provided. Rule 1608 (to be renumbered as rule 1609 under this proposal) currently refers to a notice of settlement signed by the parties or their counsel. These requirements are inconsistent

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[4] A summary of the comments that were submitted, and the subcommittee responses to each, are set forth in the accompanying comment chart beginning on page 37.

with rule 225's current requirement that *the plaintiff* notify the court of any settlement. Under this proposal, rules 1609 and 1618 would be amended to delete these inconsistent provisions. Rule 225 would be amended to incorporate provisions similar to those in existing rule 1618 making the appropriate parties responsible for paying the compensation of ADR neutrals in the event that these parties fail to give timely notice of settlement. Rule 225 would also be amended to make the time frame for giving oral notification of a settlement clearer.[5]

The committee received several comments concerning rule 225, which are discussed below.

Placing Settlement Notification Burden on the Plaintiff
As noted above, rule 225, both as currently in effect and as circulated for comment, makes "the plaintiff" responsible for notifying the court and any ADR neutral of a settlement. Mr. Robert Gerard, President of the Orange County Bar Association, suggested that the obligation to provide the court with notice under this rule should not be placed on the "plaintiff," but on "the plaintiff, cross-complainant, or other principal settling party." The State Bar of California's ADR Committee similarly suggested that the singular term "plaintiff" used in subdivision (a)(2) of this rule be changed to "plaintiffs." The State Bar committee notes that in many cases there is more than one plaintiff and that all of these plaintiffs are beneficiaries of a settlement and therefore should be responsible if the arbitrator is not properly notified of a settlement.

In response to these comments, the committee proposes that rule 225 require that "each plaintiff or other party requesting affirmative relief" be required to notify the court and any ADR neutral of a settlement.

Authority to Impose Fee Penalty Even Where Court Does Not Pay Arbitrators
As circulated for comment, the last sentence of amended rule 225(a)(2) provided:

> The amount of compensation ordered by the court must not exceed the maximum amount of compensation the arbitrator or neutral would have been entitled to receive for their services as an arbitrator or neutral at the scheduled hearing or session.

The State Bar's ADR Committee suggested that revising this sentence to clarify that a court may order a party to compensate the arbitrator at the rate authorized by the statute even where the local court has adopted a policy of not compensating judicial arbitrators. Code of Civil Procedure section 1141.18(b) provides that "[c]ompensation for arbitrators shall, *unless waived in whole or in part*, be one hundred fifty dollars ($150) per case, or

[5] Please note that additional amendments to other portions of rule 225 were also circulated for comment as part of SPR-03-14.

one hundred fifty dollars ($150) per day, whichever is greater" (emphasis added). Under the italicized language, some courts ask all of their arbitrators to waive compensation. The State Bar committee believes it is important that courts have the power to discipline dilatory advocates who are inconsiderate of the arbitrator's time and potential lost opportunities, including those arbitrators who serve on a pro bono basis.

The committee agreed in principle with this suggestion and modified the amendment to read:

> The amount of compensation ordered by the court must not exceed the maximum amount of compensation that the arbitrator would be entitled to receive for service as an arbitrator under Code of Civil Procedure section 1141.18(b) or that the neutral would have been entitled to receive for service as a neutral at the scheduled hearing or session.

Increasing the Settlement Notification Time Frame
Mr. Craig R. McCollum of Just Resolutions suggested that the time limit for giving notice of settlement in rule 225(a)(2) be changed from two days to five days.

The committee does not recommend making this change at this time. This is a substantive change that could have a practical impact on both the frequency of settlements prior to the arbitration hearing and on the number of cases in which sanctions may be imposed on parties. The committee concluded that such a change should not be considered for adoption without first seeking public comment.

Replace the arbitration administrative committee with a broader ADR committee
Existing rule 1603 requires those courts that, by statute, must have judicial arbitration programs to have an arbitration administrative committee made up of certain specified members. To reflect the fact that many courts have multiple ADR programs, not just judicial arbitration, this provision would be deleted and replaced with a new provision in rule 1580.3 requiring such courts to establish an ADR committee and providing for a broader committee membership.

The committee received several comments concerning rule 1580.3, which are discussed below.

Committee Selection and Membership (Rule 1580.3(b))
Stephen V. Love, Executive Officer, Superior Court of San Diego County suggested that the ADR committee be designated by the presiding judge. Tina Rasnow, Coordinator, Superior Court of Ventura County suggested that the committee include a member of the court staff or an attorney coordinator who deals with self-represented litigants.

The committee does not recommend making the specific changes suggested by these commentators, but instead recommends that the following new provision be added to this rule to clearly authorize the appointment of additional ADR committee members by the presiding judge:

> (2) The ADR Committee may include additional members selected by the presiding judge.

The required membership on this ADR committee parallels the type of membership requirements for the judicial arbitration committee specified in current rule 1603. The committee believes it is appropriate to continue this type of provision outlining the required membership categories, rather than leaving this to the complete discretion of the presiding judge. The committee also concluded, however, that it would be appropriate to clarify that the presiding judge may appoint additional members to the ADR committee.

Committee Terms (Rule 1580.3(b)(4))
The State Bar ADR Committee suggested that the proposed language of rule 1580.3(b)(4), which would provide that "the members of the ADR committee must serve for terms of two years" does not appear to allow for shorter service, e.g., by resignation. To address this concern, the committee is recommending that this provision be amended as follows:

> (4) ADR committee membership is for a two-year term. The members ~~of the ADR committee must serve for terms of two years,~~ may be reappointed and may be removed by the presiding judge.

Committee Powers (Rule 1580.3(b)(5))
Mr. Robert Gerard, President of the Orange County Bar Association, suggested that the powers of the ADR committee should include not only administration of the court's judicial arbitration program, but also administration of "all other ADR programs and procedures adopted by the Court." He suggested that this would make the rule consistent with the expressed intent of the rule amendment in broadening the committee membership. The committee agrees with the substance of this suggestion and recommends that this provision be amended as follows:

> The ADR committee is responsible for overseeing the court's alternative dispute resolution programs for general civil cases, including those responsibilities relating to the court's judicial arbitration program specified in rule 1603(b).

Consolidate provisions of rules 1600 and 1600.5 regarding what cases are subject to arbitration and clarify that an election to arbitrate must be made by all plaintiffs
Existing rule 1600 addresses what types of cases are subject to arbitration, and rule 1600.5 addresses cases that are exempt from arbitration. These two rules would be

consolidated into a single rule, proposed rule 1601; subdivision (a) would specify the cases in which arbitration is required and subdivision (b) would specify the cases that are exempt from arbitration.

Existing rules 1600(b) and 1601 refer to an election to arbitrate filed by *a* plaintiff. In proposed rules 1601(a)(5) and 1602(b), this would be changed to refer to an election by *all* plaintiffs. The statutory provision concerning plaintiff elections to arbitrate does not directly address elections in cases involving more than one plaintiff; Code of Civil Procedure section 1141.12(b) provides that a case must be submitted to arbitration "upon filing of an election by *the* plaintiff, any cause in which *the* plaintiff agrees that the arbitration award shall not exceed" $50,000. However, it seems appropriate that all plaintiffs be given a say about this election, particularly since, under rule 1600.5(h) (which would become 1601(b)(8) in the amended rules), cases involving multiple causes of action are exempt from judicial arbitration if the court determines that the amount in controversy *in any given cause of action* exceeds $50,000. If only one plaintiff were able make the election to arbitrate, cases in which other plaintiffs have causes of action valued at over $50,000 could be inappropriately referred to arbitration.

The committee received several comments concerning rule 1601, which are discussed below.

Unlimited Civil Cases (Rule 1601(a)(1))
The State Bar ADR Committee suggested that there was an inconsistency between the language of proposed rule 1601(a)(1) as circulated for comment, which referred to "civil cases," and the language of Code of Civil Procedure section 1141.11, (which this rule is intended to parallel), which refers only to "unlimited civil cases."

The committee agrees and recommends modifying the rule to refer to "unlimited civil cases."

Cases Where Plaintiff Elects Arbitration (Rule 1601(a)(5))
As noted above, proposed rule 1601(a) lists the cases in which judicial arbitration is required. Mr. Richard L. Haeussler suggested that rule 1601(a)(5) be amended to clarify that arbitration is required upon the election of the plaintiff, regardless of the whether the case is a limited or unlimited civil case and regardless of whether the court has adopted a local rule mandating arbitration of limited civil cases. The subcommittee agrees with the substance of Mr. Haeussler's suggestion and recommends that paragraphs (4) and (4) of subdivision (a) be amended as follows:

> (4) Upon stipulation, any ~~action~~ limited or unlimited civil case in any court, regardless of the amount in controversy~~.~~; and

(5) Upon filing of an election by ~~a~~ all plaintiffs, any ~~action~~ limited or unlimited civil case in any court in which ~~the~~ each plaintiff agrees that the arbitration award ~~shall~~ will not exceed $50,000 as to that plaintiff.

Update rules 1601 and 1605 regarding when to determine the amount in controversy
To correspond with the pending amendments to the judicial arbitration statutes and to reflect current case management practices, rules 1601 (to be renumbered as rule 1602) and 1605 would be amended to state that the amount in controversy is determined at the first case management conference or review under rule 212 that takes place after all names parties have appeared or defaulted.

Mr. Haeussler suggested that, for internal consistency, proposed rule 1602 should not refer to a plaintiff's election to arbitrate as a "request" for arbitration. The committee agrees with this suggestion and recommends amending subdivisions (a) and (d) of rule proposed rule 1602 to replace the references to such a "request" with references to an "election."

Allow inactive members of the bar to serve on arbitration panels
Rule 1604 currently requires that arbitration panels be composed of active members of the bar, retired court commissioners, and retired judges. Under these amendments, both active and inactive attorneys would be allowed to serve on the panel. Active bar membership is not required by the judicial arbitration statutes.

We received two conflicting comments on this proposed change. Mr. Haeussler supports allowing inactive members of the bar to serve as arbitrators. Stephen V. Love, Executive Officer, Superior Court of San Diego County opposes this on the basis that inactive bar members may not be up-to-date on the latest rules and program administration may be harder due to problems that can be associated with inactive status.

The committee is recommending that the proposal to permit inactive members to be on arbitration panels be adopted. The committee notes that the problems suggested by Mr. Love would also be present with retired judges and court commissioners, which the rules do not currently require to be active bar members.

Consolidate provisions on selecting an arbitrator and streamline process for selecting non-panel arbitrators
Existing rules 1602, 1605, and 1605.5 all include provisions addressing selection of an arbitrator. Under these amendments, rules 1602 and 1605.5 would be repealed and their relevant provisions would be consolidated into a single rule, rule 1605. In addition, duplicative provisions on local arbitrator selection procedures would be deleted.

Existing rule 1602(a) provides that a person selected as an arbitrator by stipulation is responsible for filing a consent to serve and an oath for the selection to become effective.

To prevent delay in the arbitrator appointment process, under this proposal, rule 1605 would instead require that when parties stipulate to an arbitrator who is not on the court's panel, the arbitrator's consent to serve and oath must be attached to the stipulation.

The committee received several comments concerning rule 1605, which are discussed below.

Stipulations to Non-Panel Arbitrators (Rule 1605(a))
The State Bar ADR Committee suggested that the rules should provide for a specific time period to stipulate to a non-panel arbitrator. Julie Setzer, Court Manager for the Superior Court of Sacramento County disagreed entirely with allowing parties to stipulate to have an arbitrator who is not on the court's panel. She noted that arbitrators are carefully screened by the court's arbitration committee before being placed on the panel, and if the court is responsible for paying arbitrators, they should be able to decide who sits on the panel.

The committee does not recommend amending the rules to prohibit stipulations to non-panel arbitrators. The authority to select non-panel arbitrators is not a new provision being added by the proposed amendments. Current rule 1602 permits the stipulation to *any person* as an arbitrator, not just members of the arbitration panel. Code of Civil Procedure section 1141.18(a) appears to specifically contemplate that parties will be able to stipulate to non-panel arbitrators – it provides that while arbitrators must generally be retired judges, retired commissioners, or attorneys, "[p]eople who are not attorneys may serve as arbitrators *upon the stipulation of all parties.*" (Emphasis added.) However, in response to Ms. Setzer's concerns, we note that neither the statutes nor the rules specify that the court is required to compensate a non-panel arbitrator that the parties selected by stipulation.

The committee agrees with the suggestion that this rule should specify the time frame for filing a stipulation to a non-panel arbitrator and recommends the following amendment:

> **(a) [Selection by stipulation]** By stipulation, the parties may select any person to serve as arbitrator. . . . <u>The stipulation to an arbitrator must be filed no later than 10 days after the case has been set for arbitration under rule 1602.</u>

The committee recommends that the time frame for stipulating to a non-panel arbitrator be 10 days after the case is set for arbitration, both for cases ordered to arbitration and those that so stipulate. This would give parties time to agree to an arbitrator while not delaying the court's selection process in the absence of such an agreement, which, under rule 1605(b), must begin 15 days after the case has been set for arbitration.

Striking/Disqualification Procedure (Rule 1605(b)(3))
The State Bar ADR Committee noted that rule 1605(b)(3) provides that, under the default arbitrator selection procedure, if there are two or more parties on a side, they must join in rejecting one of the proposed arbitrators on the list of potential arbitrators generated by the court. The State Bar committee suggests that this procedure may create a delay in the selection process if one party has a reason to disqualify a potential arbitrator under Code of Civil Procedure section 170.1. The State Bar committee therefore recommends the addition of the following sentence to this rule: "However, any party may challenge an arbitrator upon any of the grounds set forth in Code of Civil Procedure section 170.1."

The committee is not recommending this amendment. Code of Civil Procedure section 1141.18(d) already provides:

> Any party may request the disqualification of the arbitrator selected for his or her case on the grounds and by the procedures specified in Section 170.1 or 170.6. A request for disqualification of an arbitrator on grounds specified in Section 170.6 shall be made within five days of the naming of the arbitrator. An arbitrator shall disqualify himself or herself, upon demand of any party to the arbitration made before the conclusion of the arbitration proceedings on any of the grounds specified in Section 170.1.

The initial arbitrator selection process, which involves lists of potential arbitrators and the striking of names by the parties, appears to be separate from the process of disqualifying an arbitrator under either Code of Civil Procedure section 170.1 or 170.6. Arbitrators are not required to make any disclosures upon which parties would most likely decide whether to exercise a challenge under either of these provisions until after they are actually appointed.

Narrow circumstances triggering automatic resetting for arbitration
Currently, subdivisions (b) and (c) of rule 1605 have somewhat overlapping provisions: (b) requires the arbitration administrator to place matters back on the arbitration hearing list if an arbitrator declines to serve or does not hold a hearing within 90 days, while (c) permits or, in some circumstances, requires the administrator to certify the case back to the court. The amendments to rule 1605 would permit the administrator to place the case back on the arbitration hearing list if the first arbitrator declined to serve, but, out of concerns about delaying the case, would require the administrator to certify the case back to the court if either a second arbitrator declined to serve or the arbitrator failed to complete the hearing within 90 days of his or her appointment.

We received one comment related to this amendment. The State Bar ADR Committee suggested that the procedures specified in rule 1605(d) for when an arbitrator declines to serve also be followed when an arbitrator is disqualified under rule 1606. To accomplish

this, they recommended that the first sentence of the rule be revised to state: "If the first arbitrator selected declines to serve or is disqualified under Rule 1606 . . ."

The committee does not recommend this change. Rule 1606(d) already contains a provision outlining what happens when an arbitrator is disqualified: the ADR administrator must return the case to the top of the arbitration hearing list and must appoint a new arbitrator.

Authorize the ADR administrator to review arbitrator disqualification
Existing rule 1606(d) authorizes only the administrative committee or the presiding judge to review an arbitrator disqualification. The amendments would allow the court to order its staff to conduct an initial review to determine whether a disqualification of an arbitrator in a particular case involves issues that might warrant the arbitrator's removal from the panel.

We received no comments concerning this amendment.

Consolidate provisions on arbitration hearings
Existing rules 1605 and 1611 both contain provisions regarding the date, time, and location of arbitration hearings. The amendments would consolidate those provisions in one rule and place that rule in a more logical sequence as rule 1607 (existing rule 1607 would be renumbered as rule 1608). In addition, the rule would be amended to eliminate the requirement that hearings be scheduled so they would not be completed sooner than 35 days after appointment of the arbitrator because such early arbitration hearings are already effectively prevented by the requirement that the hearing not be scheduled sooner than 30 days after the arbitrator provides notice of the hearing date. The amendments would also permit the parties and arbitrator to agree to an earlier hearing date. Finally, the sentence in current rule 1611 that provides that a hearing is completed upon the filing of the arbitrator's award would be eliminated because it appears to conflict with the requirement in subdivision (b) of rule 1615 that the arbitrator file the award "[w]ithin 10 days after the conclusion of the arbitration hearing."

We received no comments concerning these amendments.

Ex parte communication
Current rule 1609 (to be renumbered as 1610) addresses communication with the arbitrator. Subdivision (b) currently provides:

> There shall be no ex parte communication by counsel or the parties with the arbitrator or a potential arbitrator except for the purpose of scheduling the arbitration hearing or requesting a continuance.

The invitation to comment did not propose any substantive changes to these provisions.

However, it specifically solicited input on whether this rule should be amended to delete the authorization for ex parte communication for purposes of requesting a continuance.

We received two comments on this issue. Mr. Stephen V. Love of the Superior Court of San Diego County suggested that ex parte communication be allowed to schedule the arbitration but not to request a continuance. The State Bar ADR Committee suggested that all exceptions to the prohibition on ex parte communication be eliminated entirely, thereby prohibiting ex parte communication for the purpose of scheduling the arbitration hearing, requesting a continuance, or otherwise. The State Bar committee suggested that some attorneys use the pretext of scheduling to discuss the merits of the case.

The committee does not recommend eliminating arbitrator's authority to engage in ex parte communications in all circumstances. This would make the restrictions on ex parte communication by judicial arbitrators stricter than those applicable either to judges or to contractual arbitrators. Canon 3B(7) of the Code of Judicial Ethics provides, in relevant part:

> A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding, except as follows:
>
> . . .
>
> (d) A judge may initiate ex parte communications, where circumstances require, for scheduling, administrative purposes, or emergencies that do not deal with substantive matters provided: (i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication; and (ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.
>
> (e) A judge may initiate or consider any ex parte communication when expressly authorized by law to do so.

Similarly, standard 14 of the Ethics Standards for Neutral Arbitrators in Contractual Arbitration provides, in relevant part:

> (a) An arbitrator must not initiate, permit, or consider any ex parte communications or consider other communications made to the arbitrator outside the presence of all of the parties concerning a pending or impending arbitration, except as permitted by this standard, by agreement of the parties, or by applicable law.
>
> (b) An arbitrator may communicate with a party in the absence of other parties

about administrative matters, such as setting the time and place of hearings or making other arrangements for the conduct of the proceedings, as long as the arbitrator reasonably believes that the communication will not result in a procedural or tactical advantage for any party. When such a discussion occurs, the arbitrator must promptly inform the other parties of the communication and must give the other parties an opportunity to respond before making any final determination concerning the matter discussed.

Instead of eliminating the arbitrators authority to engage in ex parte communication, the committee recommends that rule 1610(b) be amended as follows so that the standards applicable to judicial arbitrators more closely parallel the language of the Code of Judicial Ethics and the Ethics Standards for Neutral Arbitrators in Contractual Arbitration concerning ex parte communication:

(b) ~~There shall be no ex parte communication by counsel or the parties with the arbitrator or a potential arbitrator except for the purpose of scheduling the arbitration hearing or requesting a continuance.~~ An arbitrator must not initiate, permit, or consider any ex parte communications or consider other communications made to the arbitrator outside the presence of all of the parties concerning a pending or impending arbitration, except as follows:

(1) An arbitrator may communicate with a party in the absence of other parties about administrative matters, such as setting the time and place of hearings or making other arrangements for the conduct of the proceedings, as long as the arbitrator reasonably believes that the communication will not result in a procedural or tactical advantage for any party. When such a discussion occurs, the arbitrator must promptly inform the other parties of the communication and must give the other parties an opportunity to respond before making any final determination concerning the matter discussed.

(2) An arbitrator may initiate or consider any ex parte communication when expressly authorized by law to do so.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2004:

1. Amend rule 225 to incorporate language similar to that in existing rule 1618 making a party who fails to give notice of settlement at least two days before a scheduled alternative dispute resolution (ADR) hearing or session responsible for paying the compensation of the ADR neutral; and

2. Amend rule 1580.3 to replace the arbitration administrative committee required in specified courts by existing rule 1603 with an alternative dispute resolution committee that has a broader membership and responsibilities.

3. Amend the rules relating to the judicial arbitration program (by amending rules 1603–1605, 1606, and 1612–1618; renumbering and amending rules 1600–1600.1, 1601, and 1607–1611; and repealing rules 1600.5, 1602, and 1605.5) to (a) eliminate outdated references and language; (b) reflect current case management practices; (c) reflect pending amendments to the judicial arbitration statutes that are likely to be adopted effective January 1, 2004; and (d) make the rules easier to understand.

The text of the amended rules is attached at pages 17–36.

Attachments

Rules 225, 1580.3, and 1600–1618 of the California Rules of Court are amended effective January 1, 2004, to read:

Rule 225. Duty to notify court and others of settlement or stay

(a) [Notice of settlement]

(1) If a case is settled or otherwise disposed of, ~~the~~ each plaintiff or other party seeking affirmative relief must immediately file written notice of the settlement or other disposition with the court and serve the notice on all parties and any arbitrator or other court-connected alternative dispute resolution (ADR) neutral involved in the case. ~~The~~ Each plaintiff or other party seeking affirmative relief must also immediately give oral notice to all of the above if a hearing, conference, or trial is ~~imminent~~ scheduled to take place within 10 days.

(2) If a plaintiff or other party seeking affirmative relief does not notify an arbitrator or other court-connected ADR neutral involved in the case of a settlement at least 2 days before a scheduled hearing or session with that arbitrator or neutral, the court may order that party to compensate the arbitrator or other neutral for the scheduled hearing time. The amount of compensation ordered by the court must not exceed the maximum amount of compensation that the arbitrator would be entitled to receive for service as an arbitrator under Code of Civil Procedure section 1141.18(b) or that the neutral would have been entitled to receive for service as a neutral at the scheduled hearing or session.

(b)–(d) * * *

Rule 1580.3. ADR program administration

(a) [ADR program administrator] The presiding judge in each trial court ~~shall~~ must designate the clerk or executive officer, or another court employee who is knowledgeable about ADR processes to serve as ADR program administrator. The duties of the ADR program administrator ~~shall~~ must include:

~~**(a)**~~(1) Developing informational material concerning the court's ADR programs;

~~**(b)**~~(2) Educating attorneys and litigants about the court's ADR programs;

~~**(c)**~~(3) Supervising the development and maintenance of any panels of ADR neutrals maintained by the court; and

~~(d)~~(4) Gathering statistical and other evaluative information concerning the court's ADR programs.

(b) [**ADR committee**]

(1) In each superior court that has 18 or more authorized judges, there must be an ADR committee. The members of the ADR committee must include, insofar as is practicable:

(A) The presiding judge or a judge designated by the presiding judge;

(B) One or more other judges designated by the presiding judge;

(C) The ADR program administrator;

(D) Two or more active members of the State Bar chosen by the presiding judge as representatives of those attorneys who regularly represent parties in general civil cases before the court; including an equal number of attorneys who represent plaintiffs and who represent defendants in these cases;

(E) One or more members of the court's panel of arbitrators chosen by the presiding judge; and

(F) If the court makes a list of any ADR neutrals other than arbitrators available to litigants, one or more neutrals chosen by the presiding judge from that list.

(2) The ADR committee may include additional members selected by the presiding judge.

(3) Any other court may by rule establish an ADR committee as provided in (b)(1). Otherwise, the presiding judge or a judge designated by the presiding judge must perform the functions and have the powers of an ADR committee as provided in these rules.

(4) ADR committee membership is for a two-year term. The members of the ADR committee may be reappointed and may be removed by the presiding judge.

(5) The ADR committee is responsible for overseeing the court's alternative dispute resolution programs for general civil cases, including those

responsibilities relating to the court's judicial arbitration program specified in rule 1603(b).

CHAPTER 3. Judicial Arbitration Rules

Title Five, Special Rules for Trial Courts
Division III, Alternative Dispute Resolution Rules for Civil Cases
Chapter 3, Judicial Arbitration Rules

Rule ~~1600~~1601. ~~Actions subject to arbitration~~ Cases subject to and Exempt from Arbitration
Rule ~~1600.1~~ 1600. ~~Applicability of rules~~ Applicability of rules
~~Rule 1600.5. Actions exempt from arbitration~~
Rule ~~1601~~ 1602. ~~Stipulations and requests for~~ Assignment to arbitration
~~Rule 1602. Designation of arbitrator by stipulation~~
Rule 1603. Arbitration program administration
Rule 1604. ~~Composition of the~~ Panels of arbitrators
Rule 1605. ~~Assignment of cases~~ Selection of the arbitrator
~~Rule 1605.5. Local procedures for selecting arbitrator~~
Rule 1606. Disqualification for conflict of interest
Rule 1607. Hearings; notice; when and where held
Rule ~~1607~~ 1608. Continuances
Rule ~~1608~~ 1609. Arbitrator's fees
Rule ~~1609~~ 1610. Communication with the arbitrator
Rule ~~1610~~ 1611. Representation by counsel; proceedings when party absent
~~Rule 1611. Hearings; notice; when and where held~~
Rule 1612. Discovery
Rule 1613. Rules of evidence at hearing
Rule 1614. Conduct of the hearing
Rule 1615. The award; entry as judgment; motion to vacate
Rule 1616. Trial after arbitration
Rule 1617. Arbitration not pursuant to rules
Rule 1618. Settlement of case

Rule ~~1600.1~~ 1600. Applicability of rules

The rules in this chapter (commencing with this rule ~~1600~~) apply if Code of Civil Procedure, part 3, title 3, chapter 2.5 (commencing with section 1141.10) is in effect.

Rule ~~1600~~ 1601. ~~Actions~~Cases subject to and exempt from arbitration

(a) [Cases subject to arbitration] Except as provided in ~~rule 1600.5~~ (b), the following ~~actions shall~~ cases must be arbitrated:

~~(c)~~ (1) In each superior court with 18 or more authorized judges, ~~or 10 or more authorized judges in a county in which there is at least one municipal court,~~ all unlimited civil ~~actions~~ cases where the amount in controversy does not exceed $50,000 as to any plaintiff~~.~~;

~~(d)~~ (2) In each superior court with fewer than 18 authorized judges~~, or fewer than 10 authorized judges in a county in which there is at least one municipal court~~ that so provides by local rule, all ~~actions~~ unlimited civil cases where the amount in controversy does not exceed $50,000 as to any plaintiff~~.~~;

~~(e)~~ (3) All limited civil cases in courts that so provide by local rule~~.~~;

~~(a)~~ (4) Upon stipulation, any ~~action~~ limited or unlimited civil case in any court, regardless of the amount in controversy~~.~~; and

~~(b)~~ (5) Upon filing of an election by ~~a~~ all plaintiffs, any ~~action~~ limited or unlimited civil case in any court in which ~~the~~ each plaintiff agrees that the arbitration award ~~shall~~ will not exceed $50,000 as to that plaintiff.

~~Rule 1600.5.~~(b) [~~Actions~~ Cases exempt from arbitration] The following ~~actions~~ cases are exempt from arbitration:

~~(a)~~ (1) ~~Actions~~ Cases that include a prayer for equitable relief that is not frivolous or insubstantial;

~~(b)~~ (2) Class actions;

~~(c)~~ (3) Small claims ~~actions~~ cases or trials de novo on appeal from the small claims court;

~~(d)~~ (4) Unlawful detainer proceedings;

~~(e)~~ (5) Family Law Act proceedings except as provided in Family Code section 2554;

~~(f)~~ (6) Any ~~action~~ case otherwise subject to arbitration that is found by the court not to be ~~not~~ amenable to arbitration on the ground that arbitration would not reduce the probable time and expense necessary to resolve the litigation;

~~**(g)**~~ (7) Any category of ~~actions~~ cases otherwise subject to arbitration but excluded by local rule as not amenable to arbitration on the ground that, under the circumstances relating to the particular court, arbitration of such cases would not reduce the probable time and expense necessary to resolve the litigation; and

~~**(h)**~~ (8) ~~Actions~~ Cases involving multiple causes of action or a cross-complaint if the court determines that the amount in controversy as to any given cause of action or cross-complaint exceeds $50,000.

Rule ~~1601~~ 1602. ~~Stipulations and requests for~~ Assignment to arbitration

(a) [Stipulations to arbitration] When the parties stipulate to arbitration, the ~~action~~ case must be set for arbitration forthwith. The stipulation must be filed no later than the time the initial case management statement is filed, unless the court orders otherwise.

(b) [~~Requests~~ Plaintiff election for arbitration] Upon written ~~request~~ election of ~~a~~ all plaintiffs to submit ~~an action~~ a case to arbitration, the ~~action~~ case must be set for arbitration forthwith, subject to a motion by defendant for good cause to delay the arbitration hearing. The ~~request~~ election must be filed no later than the time the initial case management statement is filed, unless the court orders otherwise.

(c) [Cross-actions] ~~An action~~ A case involving a cross-complaint where ~~a~~ all plaintiffs ~~has~~ have elected to arbitrate must be removed from the list of cases assigned to arbitration if, upon motion of the cross-complainant made within 15 days after notice of the election to arbitrate, the court determines that the amount in controversy relating to the cross-complaint exceeds $50,000.

(d) [Case management conference] Absent a stipulation or ~~a~~ an ~~request~~ election by all plaintiffs to submit to arbitration, ~~actions~~ cases must be set for arbitration ~~at the initial case management conference or no later than 90 days before the date set for trial, whichever occurs first.~~ when the court determines that the amount in controversy does not exceed $50,000. The amount in controversy must be determined at the first case management conference or review under rule 212 that takes place after all named parties have appeared or defaulted.

Rule 1603. Arbitration program administration

(a) [Arbitration administrator] The presiding judge ~~shall~~ must designate the ~~clerk, executive officer or other court employee~~ ADR administrator selected

under rule 1580.3 to serve as arbitration administrator. The arbitration administrator ~~shall~~ must supervise the selection of arbitrators for the cases on the arbitration hearing list, generally supervise the operation of the arbitration program and perform any additional duties delegated by the presiding judge.

~~**(b)** In each superior court having 18 or more authorized judges, or 10 or more authorized judges in a county in which there is at least one municipal court, there shall be an administrative committee composed of, insofar as may be practicable:~~

~~(1) the presiding judge or a judge designated by the presiding judge;~~

~~(2) the arbitration administrator;~~

~~(3) two or more active members of the State Bar chosen by the presiding judge as representative of those attorneys who regularly represent plaintiffs in personal injury tort actions before the court;~~

~~(4) an equal number of active members of the State Bar chosen by the presiding judge as representative of those attorneys who regularly represent defendants in personal injury tort actions before the court.~~

~~(5) three or more active members of the State Bar chosen by the presiding judge as representative of attorneys who regularly try other civil cases.~~

~~It may also include:~~

~~(6) three or more active members of the State Bar chosen by the presiding judge as representative of attorneys who regularly try cases before the court in any specialized area for which the presiding judge establishes a specialized arbitration panel.~~

~~The members of the administrative committee shall serve for terms of two years; they may be reappointed, and may be removed by the presiding judge.~~

~~**(c)** Any other court may by rule establish an administrative committee as provided in subdivision (b). Otherwise, the presiding judge or a judge designated by the presiding judge shall perform the functions and have the powers of an administrative committee as provided in these rules.~~

~~**(d)**~~**(b)** **[Responsibilities of ADR committee]** The ~~administrative~~ ADR committee established under rule 1580.3 ~~shall have power~~ is responsible for:

~~(1) to select its chairman and provide for its procedures;~~

~~(2)~~(1) ~~to appoint~~ Appointing the panels of arbitrators provided for in rule 1604;

~~(3)~~(2) ~~to remove~~ Removing a person from a panel of arbitrators;

~~(4)~~(3) ~~to establish~~ Establishing procedures for selecting an arbitrator not inconsistent with these rules or local court rules; and

~~(5)~~(4) ~~to review~~ Reviewing the administration and operation of the arbitration program periodically and make~~e~~ing recommendations to the Judicial Council as it deems appropriate to improve the program, promote the ends of justice, and serve the needs of the community.

Rule 1604. ~~Composition of the~~ Panels of arbitrators

(a) [Creation of panels] Every court must have a panel of arbitrators for personal injury cases, and such additional panels as the presiding judge may, from time to time, determine are needed.

(b) [Composition of panels] The panels of arbitrators must be composed of active or inactive members of the State Bar, retired court commissioners who were licensed to practice law prior to their appointment as a commissioner, and retired judges. A former California judicial officer is not eligible for the panel of arbitrators unless he or she is an active or inactive member of the State Bar.

~~Each person appointed serves as a member of a panel of arbitrators at the pleasure of the administrative committee. A person may be on arbitration panels in more than one county.~~

(c) [Responsibilities of ADR committee] The ~~administrative~~ ADR committee is responsible for determining the size and composition of each panel of arbitrators. The ~~number of attorneys on a~~ personal injury panel ~~who usually represent plaintiffs must~~, to the extent feasible, must contain an equal ~~the~~ number of those who usually represent plaintiffs and those who usually represent defendants.

(d) [Service on panel] Each person appointed serves as a member of a panel of arbitrators at the pleasure of the ADR committee. A person may be on arbitration panels in more than one county. An appointment to a panel is effective when the person appointed:

(1)–(3) * * *

(e) [Panel lists] Lists showing the names of panel arbitrators available to hear cases must be available for public inspection in the ~~arbitration~~ ADR program administrator's office.

Rule 1605. ~~Assignment of cases~~ Selection of the arbitrator

~~Rule 1602.~~(a) [~~Designation of arbitrator~~ Selection by stipulation] By stipulation, the parties may ~~by stipulation designate~~ select any person to serve as arbitrator. If the parties select a person who is not on the court's arbitration panel to serve as the arbitrator, the ~~designation~~ stipulation ~~shall~~ will be effective only if: (1) the ~~designated~~ selected person ~~files~~ completes a written consent to serve and the oath required of panel arbitrators under these rules ~~within 15 days of the date of stipulation~~; and (2) both the consent and the oath are attached to the stipulation. A stipulation may specify the maximum amount of the arbitrator's award. The stipulation to an arbitrator must be filed no later than 10 days after the case has been set for arbitration under rule 1602.

~~(a)~~(b) [Selection absent stipulation or local procedures] ~~Unless~~ If the arbitrator has not been ~~designated~~ selected by stipulation and the court has not adopted local rules or procedures for the selection of the arbitrator as permitted under (c), the arbitrator will be selected as follows:

(1) Within 15 days after a case is ~~placed on the~~ set for arbitration ~~hearing list~~ under rule 1602, ~~the administrator shall select at random at least three names from the appropriate panel in accordance with procedures established by the administrative committee. The procedures shall also provide a method by which each party or side may within 10 days reject in writing an equal number of names so that, if each party or side rejects the maximum number of names permitted, a single name will remain and that arbitrator will be deemed appointed. If at the end of 10 days two or more names have not been rejected, the administrator shall appoint at random one of the remaining arbitrators.~~

~~The local procedures shall assure that an arbitrator is appointed within 30 days from the submission of a case to arbitration pursuant to rule 1600(a), (d) or (e).~~

~~In the absence of local procedures to the contrary:~~

~~(1)~~ the administrator ~~shall~~ must determine the number of clearly adverse sides in the case; in the absence of a cross-complaint bringing in a new party, the administrator may assume there are two sides. A dispute as to the

number or identity of sides ~~shall~~ must be decided by the presiding judge in the same manner as ~~are~~ disputes in determining sides entitled to peremptory challenges of jurors.

(2) The administrator ~~shall~~ must select at random a number of names equal to the number of sides, plus one.

(3) The list of randomly selected names ~~shall~~ must be mailed to counsel for the parties, and each side has 10 days from the date of mailing to file a rejection, in writing, of no more than one name on the list; if there are two or more parties on a side, they must join in the rejection of a single name.

(4) Promptly on the expiration of the 10-day period, the administrator ~~shall~~ must appoint, at random, one of the persons on the list whose name was not rejected, if more than one name remains.

(5) The administrator ~~shall~~ must assign the case to the arbitrator appointed and ~~shall~~ must give notice of the appointment to the arbitrator and to all parties. ~~Within 15 days after the appointment of the arbitrator, the arbitrator shall notify each party and the administrator in writing of the date, time, and place of the arbitration hearing.~~

~~Rule 1605.5.~~(c) [Local selection procedures ~~for selecting arbitrator~~] In lieu of the procedure in ~~1605~~(b), a court ~~having~~ that has an arbitration program may, by local rule or by procedures adopted by its ~~administrative~~ ADR committee, ~~pursuant to rule 1603(d)(4)~~ establish any fair method of ~~assigning a case to~~ selecting an arbitrator that: (1) affords each side an opportunity to challenge at least one listed arbitrator peremptorily; and (2) ensures that an arbitrator is appointed within 30 days from the submission of a case to arbitration. The local rule or procedure may require that all steps leading to the selection of the arbitrator take place during or immediately following the case management conference or review under rule 212 at which the court determines the amount in controversy and the suitability of the case for arbitration. ~~The court may require that counsel with appropriate authority attend the conference.~~

~~A copy of the local rule or procedure adopted pursuant to this rule shall accompany the notice of the hearing to determine the amount in controversy.~~

~~(b)~~(d) [Procedure if first arbitrator declines to serve] If the first arbitrator selected declines to serve ~~or does not complete the hearing within 90 days after the date of the assignment of the case to him or her, including any time due to continuances granted under rule 1607~~, the administrator ~~shall~~ must vacate the appointment of the arbitrator and ~~shall~~ may either:

(1) Return the case to the top of the arbitration hearing list, restore the arbitrator's name to the list of those available for selection to hear cases, and appoint a new arbitrator ~~pursuant to subdivision (a). The 90-day period may be extended only by order of the court upon the motion of a party as provided in rule 1607(b).~~; or

(2) Certify the case to the court.

~~(c)~~(e) [Procedure if second arbitrator declines to serve or hearing is not timely held] ~~When a case is returned under subdivision (b) to the arbitration hearing list after assignment to the first arbitrator, the administrator may certify the case to the court. When the case is returned after assignment to the~~ If the second arbitrator selected declines to serve or if the arbitrator does not complete the hearing within 90 days after the date of the assignment of the case to him or her, including any time due to continuances granted under rule 1607, ~~however,~~ the administrator ~~shall~~ must certify the case to the court.

(f) [Cases certified to court] If a case is certified to the court under either (d) or (e), the court ~~shall~~ must summon the parties or their counsel. If the inability to hold a hearing is due to the neglect or lack of cooperation of a party who elected or stipulated for arbitration, the case ~~shall~~ must be removed from the arbitration hearing list and restored to the civil active list~~;~~. In all other circumstances, cases may be ordered reassigned for arbitration, or the court may make any other appropriate order to expedite disposition of the case.

Rule 1606. Disqualification for conflict of interest

(a) [Arbitrator's duty to disqualify himself or herself] The arbitrator must determine whether any cause exists for disqualification upon any of the grounds set forth in section 170.1 of the Code of Civil Procedure governing the disqualification of judges. If any member of the arbitrator's law firm would be disqualified under subdivision (a)(4) of section 170.1, the arbitrator is disqualified. Unless the ground for disqualification is disclosed to the parties in writing and is expressly waived by all parties in writing, the arbitrator must promptly notify the administrator of any known ground for disqualification and another arbitrator must be selected as provided in rule 1605.

(b) [Disclosures by arbitrator] In addition to any other disclosure required by law, no later than five days prior to the deadline for parties to file a motion for disqualification of the arbitrator under Code of Civil Procedure section 170.6 or, if the arbitrator is not aware of his or her appointment or of a matter subject to disclosure at that time, as soon as practicable thereafter, an arbitrator must disclose to the parties:

(1)–(2) * * *

(c) [Request for disqualification] A copy of any request by a party for the disqualification of an arbitrator pursuant to section 170.1 or 170.6 of the Code of Civil Procedure must be sent to the administrator.

(d) [Arbitrator's failure to disqualify himself or herself] Upon motion of any party, made as promptly as possible under sections 170.l and 1141.18(d) of the Code of Civil Procedure before the conclusion of arbitration proceedings, the appointment of an arbitrator to a case must be vacated if the court finds that: (1) the party has demanded that the arbitrator disqualify himself or herself; (2) ~~and~~ the arbitrator has failed to do so; and (3) any of the grounds specified in section 170.1 exist~~s~~. The ~~arbitration~~ ADR administrator must return the case to the top of the arbitration hearing list and must appoint a new arbitrator. The disqualified arbitrator's name must be returned to the list of those available for selection to hear cases, unless the court orders that the circumstances of the disqualification be reviewed~~, under rules 1603(d)(3) and 1604(b),~~ by the ADR administrator, the ~~administrative~~ ADR committee, the presiding judge, or a judge designated by the presiding judge, for appropriate action.

Rule ~~1611~~ 1607. Hearings; notice; when and where held

(a) [Setting hearing; notice] Within 15 days after the appointment of the arbitrator, the arbitrator ~~shall~~ must set the time, date, and place of the arbitration hearing~~,~~ and notify each party and the administrator in writing of the time, date, and place set. ~~shall give notice of the hearing date to the parties at least 30 days prior to the date set for the arbitration hearing.~~

(b) [Date of hearing; limitations] ~~No hearings shall be set for Saturdays or legal holidays,~~ Except upon the agreement of all parties and the arbitrator~~.~~, the arbitration hearing date must not be set:

(1) Earlier than 30 days after the date the arbitrator sends the notice of the hearing under (a); or

(2) On Saturdays, Sundays, or legal holidays.

(c) [Hearing completion deadline] The hearing~~s~~ ~~shall~~ must be scheduled so as to be completed ~~not sooner than 35 days, nor~~ no later than 90 days from the date of the assignment of the case to the arbitrator, including any time due to continuances granted under rule ~~1607~~ 1608.

(d) [Hearing location] The hearings ~~shall~~ must take place in appropriate facilities provided by the court or selected by the arbitrator. ~~As used in this paragraph, a hearing is completed upon filing of the arbitrator's award with the clerk pursuant to rule 1615(b).~~

Rule ~~1607~~ 1608. Continuances

(a) [Stipulation to continuance; consent of arbitrator] Except as provided in ~~this rule~~ (c), the parties may stipulate to a continuance in the case, with the consent of the assigned arbitrator. An arbitrator ~~shall~~ must consent to a request for a continuance if it appears that good cause exists. Notice of the continuance ~~shall~~ must be sent to the ~~arbitration~~ ADR administrator.

(b) [Court grant of continuance] If the arbitrator declines to give consent to a continuance, upon the motion of a party and for good cause shown under the standards recommended in section 9 of the Standards of Judicial Administration, the court may grant a continuance of the arbitration hearing. In the event the court grants the motion, the party who requested the continuance ~~shall~~ must notify the arbitrator and the arbitrator ~~shall~~ must reschedule the hearing, giving notice to all parties to the arbitration proceeding.

(c) [Limitation on length of continuance] An arbitration hearing ~~shall~~ must not be continued to a date later than 90 days after the assignment of the case to the arbitrator, including any time due to continuances granted under this rule, except by order of the court upon the motion of a party as provided in ~~subdivision~~ (b).

Rule ~~1608~~ 1609. Arbitrator's fees

(a) [Filing of award or notice of settlement required] The arbitrator's award~~, or a notice of settlement signed by the parties or their counsel~~, must be timely filed with the clerk of the court under rule 1615(b) or a notice of settlement must have been filed before a fee may be paid to the arbitrator.

(b) [Exceptions for good cause] On the arbitrator's verified ex parte application, the court may for good cause authorize payment of a fee:

(1) If the arbitrator devoted a substantial amount of time to a case that was settled without a hearing~~,~~;; or

(2) If the award was not timely filed.

(c) [Arbitrator's fee statement] The arbitrator's fee statement ~~shall~~ must be submitted to the administrator promptly upon the completion of the arbitrator's

duties, and ~~shall~~ must set forth the title and number of the cause arbitrated, the date of the arbitration hearing, and the date the award or settlement was filed.

Rule ~~1609~~ 1610. Communication with the arbitrator

(a) [Disclosure of settlement offers prohibited] No disclosure of any offers of settlement made by any party ~~shall~~ may be made to the arbitrator prior to the filing of the award.

(b) [Ex parte communication prohibited] ~~There shall be no ex parte communication by counsel or the parties with the arbitrator or a potential arbitrator except for the purpose of scheduling the arbitration hearing or requesting a continuance.~~ An arbitrator must not initiate, permit, or consider any ex parte communications or consider other communications made to the arbitrator outside the presence of all of the parties concerning a pending or impending arbitration, except as follows:

(1) An arbitrator may communicate with a party in the absence of other parties about administrative matters, such as setting the time and place of hearings or making other arrangements for the conduct of the proceedings, as long as the arbitrator reasonably believes that the communication will not result in a procedural or tactical advantage for any party. When such a discussion occurs, the arbitrator must promptly inform the other parties of the communication and must give the other parties an opportunity to respond before making any final determination concerning the matter discussed.

(2) An arbitrator may initiate or consider any ex parte communication when expressly authorized by law to do so.

Rule ~~1610~~ 1611. Representation by counsel; proceedings when party absent

(a) [Representation by counsel] A party to the arbitration has a right to be represented by an attorney at any proceeding or hearing in arbitration, but this right may be waived. A waiver of this right may be revoked, but if revoked, the other party is entitled to a reasonable continuance for the purpose of obtaining counsel.

(b) [Proceedings when party absent] The arbitration may proceed in the absence of any party who, after due notice, fails to be present and to obtain a continuance. An award ~~shall~~ must not be based solely upon the absence of a party. In the event of a default by defendant, the arbitrator ~~shall~~ must require

the plaintiff to submit such evidence as may be appropriate for the making of an award.

Rule 1612. Discovery

The parties to the arbitration ~~shall~~ have the right to take depositions and to obtain discovery, and to that end may exercise all of the same rights, remedies, and procedures, and ~~shall be~~ are subject to all of the same duties, liabilities, and obligations as provided in part 4, title 3, chapter 3 of the Code of Civil Procedure, except that all discovery ~~shall~~ must be completed not later than 15 days prior to the date set for the arbitration hearing unless the court, upon a showing of good cause, makes an order granting an extension of the time within which discovery must be completed.

Rule 1613. Rules of evidence at hearing

(a) **[Presence of arbitrator and parties]** All evidence ~~shall~~ must be taken in the presence of the arbitrator and all parties, except where any of the parties has waived the right to be present or is absent after due notice of the hearing.

(b) **[Application of civil rules of evidence]** The rules of evidence governing civil ~~actions~~ cases apply to the conduct of the arbitration hearing, except:

(1) Any party may offer written reports of any expert witness, medical records and bills (including physiotherapy, nursing, and prescription bills), documentary evidence of loss of income, property damage repair bills or estimates, police reports concerning an accident which gave rise to the case, other bills and invoices, purchase orders, checks, written contracts, and similar documents prepared and maintained in the ordinary course of business.

(A) The arbitrator ~~shall~~ must receive them in evidence if copies have been delivered to all opposing parties at least 20 days prior to the hearing.

(B) Any other party may subpoena the author or custodian of the document as a witness and examine the witness as if under cross-examination.

(C) Any repair estimate offered as an exhibit, and the copies delivered to opposing parties, ~~shall~~ must be accompanied (i) by a statement indicating whether or not the property was repaired, and, if it was, whether the estimated repairs were made in full or in part, and (ii) by

a copy of the receipted bill showing the items of repair made and the amount paid.

(D) The arbitrator ~~shall~~ must not consider any opinion as to ultimate fault expressed in a police report.

(2) The written statements of any other witness may be offered and ~~shall~~ must be received in evidence if:

~~(i)~~(A) They are made by affidavit or by declaration under penalty of perjury;

~~(ii)~~(B) Copies have been delivered to all opposing parties at least 20 days prior to the hearing; and

~~(iii)~~(C) No opposing party has, at least 10 days before the hearing, delivered to the proponent of the evidence a written demand that the witness be produced in person to testify at the hearing. The arbitrator ~~shall~~ must disregard any portion of a statement received pursuant to this rule that would be inadmissible if the witness were testifying in person, but the inclusion of inadmissible matter does not render the entire statement inadmissible.

(3) (A) The deposition of any witness may be offered by any party and ~~shall~~ must be received in evidence, subject to objections available under Code of Civil Procedure section 2025(g), notwithstanding that the deponent is not "unavailable as a witness" within the meaning of section 240 of the Evidence Code and no exceptional circumstances exist, if:

(i) The deposition was taken in the manner provided for by law or by stipulation of the parties and within the time provided for in these rules~~,~~; and

(ii) Not less than 20 days prior to the hearing the proponent of the deposition delivered to all opposing parties notice of intention to offer the deposition in evidence.

(B) The opposing party, upon receiving the notice, may subpoena the deponent and, at the discretion of the arbitrator, either the deposition may be excluded from evidence or the deposition may be admitted and the deponent may be further cross-examined by the subpoenaing

party. These limitations are not applicable to a deposition admissible under the terms of section 2025(u) of the Code of Civil Procedure.

(c) [Subpoenas]

(1) ~~Subpenas shall issue for~~ The attendance of witnesses at arbitration hearings may be compelled through the issuance of subpoenas as provided in the Code of Civil Procedure, in section 1985 and elsewhere in part 4, title 3, chapters 2 and 3. It ~~shall be~~ is the duty of the party requesting the subpoena to modify the form of subpoena so as to show that the appearance is before an arbitrator, and to give the time and place set for the arbitration hearing.

(2) At the discretion of the arbitrator, nonappearance of a properly subpoenaed witness may be a ground for an adjournment or continuance of the hearing.

(3) If any witness properly served with a subpoena fails to appear at the arbitration hearing or, having appeared, refuses to be sworn or to answer, proceedings to compel compliance with the subpoena on penalty of contempt may be had before the superior court as provided in Code of Civil Procedure section 1991 for other instances of refusal to appear and answer before an officer or commissioner out of court.

(d) [Delivery of documents] For purposes of this rule, "delivery" of a document or notice may be accomplished manually or by mail in the manner provided by Code of Civil Procedure section 1013. If service is by mail, the times prescribed in this rule for delivery of documents, notices, and demands are increased by five days.

Rule 1614. Conduct of the hearing

(a) [Arbitrator's powers] The arbitrator ~~shall have~~ has the following powers; all other questions arising out of the case are reserved to the court:

(1) To administer oaths or affirmations to witnesses;

(2) To take adjournments upon the request of a party or upon his or her own initiative when deemed necessary;

(3) To permit testimony to be offered by deposition;

(4) To permit evidence to be offered and introduced as provided in these rules;

(5) To rule upon the admissibility and relevancy of evidence offered;

(6) To invite the parties, on reasonable notice, to submit trial briefs;

(7) To decide the law and facts of the case and make an award accordingly;

(8) To award costs, not to exceed the statutory costs of the suit; and

(9) To examine any site or object relevant to the case.

~~All other questions arising out of the case are reserved to the court.~~

(b) [Record of proceedings]

(1) The arbitrator may, but is not required to, make a record of the proceedings.

(2) Any records of the proceedings made by or at the direction of the arbitrator ~~shall be~~ are deemed the arbitrator's personal notes and are not subject to discovery, and the arbitrator ~~shall~~ must not deliver them to any party to the case or to any other person, except to an employee using the records under the arbitrator's supervision or pursuant to a subpoena issued in a criminal investigation or prosecution for perjury.

(3) No other record ~~shall~~ may be made, and the arbitrator ~~shall~~ must not permit the presence of a stenographer or court reporter or the use of any recording device at the hearing, except as expressly permitted by ~~this rule~~ (1).

Rule 1615. The award; entry as judgment; motion to vacate

(a) [The award; form and content]

(1) The award ~~shall~~ must be in writing and signed by the arbitrator. It ~~shall~~ must determine all issues properly raised by the pleadings, including a determination of any damages and an award of costs if appropriate.

(2) The arbitrator is not required to make findings of fact or conclusions of law.

(b) [Filing the award]

(1) Within 10 days after the conclusion of the arbitration hearing, the arbitrator ~~shall~~ must file the award with the clerk, with proof of service on each party to the arbitration. On the arbitrator's application in cases of unusual length or complexity, the court may allow up to 20 additional days for the filing and service of the award.

(2) Within the time for filing the award, the arbitrator may file and serve an amended award.

(c) [Entry of award as judgment]

(1) The clerk ~~shall~~ must enter the award as a judgment forthwith upon the expiration of 30 days after the award is filed if no party has, during that period, served and filed a request for trial as provided in these rules.

(2) Promptly upon entry of the award as a judgment the clerk ~~shall~~ must mail notice of entry of judgment to all parties who have appeared in the case and ~~shall~~ must execute a certificate of mailing and place it in the court's file in the case.

(3) The judgment so entered ~~shall have~~ has the same force and effect in all respects as, and is subject to all provisions of law relating to, a judgment in a civil ~~action~~ case or proceeding, except that it is not subject to appeal and it may not be attacked or set aside except as provided in ~~subdivision~~ (d). The judgment so entered may be enforced as if it had been rendered by the court in which it is entered.

(d) [Vacating award]

(1) A party against whom a judgment is entered pursuant to an arbitration award may, within six months after its entry, move to vacate the judgment on the ground that the arbitrator was subject to a disqualification not disclosed before the hearing and of which the arbitrator was then aware, or upon one of the grounds set forth in section 473 or subdivisions (a)(1), (2), and (3) of section 1286.2 of the Code of Civil Procedure, and upon no other grounds.

(2) The motion ~~shall~~ must be heard upon notice to the adverse parties and to the arbitrator, and may be granted only upon clear and convincing evidence that the grounds alleged are true, and that the motion was made

as soon as practicable after the moving party learned of the existence of those grounds.

Rule 1616. Trial after arbitration

(a) **[Request for trial; deadline]** Within 30 days after the arbitration award is filed with the clerk of the court, a party may request a trial by filing with the clerk a request for trial, with proof of service of a copy upon all other parties appearing in the case. A request for trial filed after the parties have been served with a copy of the award by the arbitrator, but before the award has been filed with the clerk, shall be deemed valid and timely filed. The 30-day period within which to request trial may not be extended.

(b) **[Restoring case to civil active list]** The case ~~shall~~ must be restored to the civil active list for prompt disposition, in the same position on the list it would have had if there had been no arbitration in the case, unless the court orders otherwise for good cause.

(c) **[References to arbitration during trial prohibited]** The case ~~shall~~ must be tried as though no arbitration proceedings had occurred. No reference may be made during the trial to the arbitration award, to the fact that there had been arbitration proceedings, to the evidence adduced at the arbitration hearing, or to any other aspect of the arbitration proceedings, and none of the foregoing may be used as affirmative evidence, or by way of impeachment, or for any other purpose at the trial.

(d) **[Costs after trial]** In assessing costs after the trial, the court ~~shall~~ must apply the standards specified in section 1141.21 of the Code of Civil Procedure.

Rule 1617. Arbitration not pursuant to rules

These rules do not prohibit the parties to any civil ~~action~~ case or proceeding from entering into arbitration agreements pursuant to part 3, title 9 of the Code of Civil Procedure. Neither the ~~administrative~~ ADR committee nor the ~~arbitration~~ ADR administrator ~~shall~~ may take any part in the conduct of an arbitration under an agreement not in conformity with these rules except that the administrator may, upon joint request of the parties, furnish the parties to the agreement with a randomly selected list of at least three names of members of the appropriate panel of arbitrators.

Rule 1618. Settlement of case

If a case is settled, ~~the parties shall~~ each plaintiff or other party seeking affirmative relief must notify the arbitrator and the court as required in rule 225 ~~at least two court days~~

~~before the arbitration hearing date or the parties shall equally compensate the arbitrator in the total sum of $150~~.

SPR03-08
Judicial Arbitration Rules
(amend Cal. Rules of Court, rules 225, 1580.3, and 1600–1618)

	Rule	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	General	Hon. Ronald L. Bauer Orange County Rules & Forms Committee Superior Court of Orange County	A	Y	No comment.	No response necessary.
2.	General	Mr. Saul Bercovitch The State Bar of California ADR Committee	AM	Y	The ADR committee commends the Civil and Small Claims Advisory Committee for its excellent work on these proposals, and appreciates the opportunity to submit these comments. The ADR committee believes the proposed changes to the rules generally achieve their objectives of deleting outdated references to the municipal courts, reflecting current case management practices and procedures, and conforming with proposed statutory amendments (AB 1712). The ADR committee has the following specific comments.	No response necessary.
3.	General	Ms. Patti Morua-Widdows Manager Ventura Superior Court	A	N	No comment.	No response necessary.
4.	General	Mr. Robert Gerard President Orange County Bar Association	AM	Y	The effective date of these rule changes should be January 1, 2004.	Agree. Will modify heading language.
5.	225	Mr. Robert Gerard President Orange County Bar Association	AM	Y	Under rule 225 the obligation to file written notice of settlement should be with the "plaintiff, cross-complainant, or other principal setting party"; it makes no sense to put this burden on plaintiff who may not even be a party to settlements among others.	Recommend amending rule to require notice of settlement by each plaintiff or other party seeking affirmative relief.
6.	225(a)(2)	Mr. Saul Bercovitch	AM	N	Proposed Rule 225(a)(2)	Recommend amending rule to

	Rule	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
		The State Bar of California ADR Committee			The ADR committee believes that proposed rule 225(a)(2) should be amended to read as follows: "If the plaintiff or plaintiffs do~~es~~ not notify an arbitrator other court-connected ADR neutral involved in the case of a settlement at least two days before a scheduled hearing or session with that arbitrator or neutral, the court may order the plaintiffs to compensate the arbitrator or other neutral for the scheduled hearing time. The amount of compensation ordered by the court must not exceed the maximum amount of compensation the arbitrator or neutral would ~~have been~~ be entitled to receive, pursuant to Code of Civil Procedure section 1141.18(b), for ~~their~~ his or her service~~s~~ as an arbitrator or neutral ~~at the scheduled hearing or session.~~" As proposed, rule 225(a)(2) would provide that if the plaintiff does not notify the arbitrator or neutral of a settlement at least two days before a scheduled hearing or session, the court may order the plaintiff to compensate the neutral in an amount not to exceed the maximum amount of compensation the arbitrator or neutral would have been entitled to receive "at the scheduled hearing or session." Under Code of Civil Procedure section 1141.18(b), the arbitrator may be paid $150 per case or per day, but some courts do not compensate the arbitrator at all. The language in rule 225(a)(2), as proposed, appears to mean that, in courts where the arbitrator would not have been compensated had the hearing gone forward, a plaintiff who fails to timely notify the arbitrator of a settlement could not be penalized. The ADR committee's suggested revision is intended to provide for an order requiring the plaintiffs to compensate the	require notice of settlement by each plaintiff or other party seeking affirmative relief**.** Agree with substance of proposed amendment to last sentence, but recommend slightly different language: The amount of compensation ordered by the court must not exceed the maximum amount of compensation that the arbitrator ~~or neutral~~ would ~~have been~~ be entitled to receive for ~~their~~ service~~s~~ as an arbitrator under Code of Civil Procedure section 1141.18(b) or that the neutral would have been entitled to receive for services as a neutral at the scheduled hearing or session. This alternate amendment would maintain the ability of all courts to deter abuses but would also make clear that the reference to the fees set by Code of Civil Procedure section 1141.18 only applies in

	Rule	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
					arbitrator ($150 per case or per day), even where arbitrator would not have been compensated had the hearing gone forward. The ADR committee recognizes that the language as proposed would create an anomaly, to wit, the arbitrator would not be paid if he or she conducted a hearing but could be paid if the hearing did not occur. While there certainly is logic to this position, the ADR committee believes that it is outweighed by the need to discipline dilatory advocates who are inconsiderate of the arbitrator's time and potential lost opportunities. The other changes that the ADR committee proposes are technical. The proposed rule speaks in terms of "a plaintiff," but in many cases there is more than one plaintiff. Furthermore, since all plaintiffs are beneficiaries of the settlement, all of them should be responsible if the one delegated to notify the arbitrator fails to carry out his or her obligation. Hence the ADR committee proposes adding "or plaintiffs" to the beginning of the first sentence in the proposed rule, and changing "plaintiff" toward the end of the sentence to "plaintiffs." Finally, the ADR committee proposes that "their services" in the last sentence be replaced by "his or service" because the remainder of the sentence refers to an arbitrator or neutral, in the singular.	the case of judicial arbitrators, not other types of ADR neutrals.
7.	225(a)(2)	Craig R. McCollum Just Resolutions, LLC	AM	N	I would propose that time limit for giving notice of settlement as set forth in rule 225(a)(2) be changed from two days to five days. If no notice, then arbitrators should be entitled to their fee, regardless of time spent in preparing for the	Not recommending making this change at this time. This is a substantive change that could have a practical impact on both

	Rule	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
					mediation. At this point, calendars have been cleared for these arbitrations and at that late date, other private mediations and arbitrations cannot be scheduled (or depositions if they arbitrator is not a professional ADR provider). So there is not opportunity to fill in the empty calendar at that late date, resulting in a real loss to the panelist arbitrator.	the frequency of settlements prior to the arbitration hearing and on the number of cases in which sanctions might be imposed on plaintiffs. Such a change should not be recommended without first seeking public comment.
8.	1580.3	Mr. Stephen V. Love Executive Officer Superior Court of California, County of San Diego	AM	N	CRC, rule 1580.3(b)(2)—suggest that the ADR committee be designated by the presiding judge.	Recommend maintaining provision outlining required membership categories, as in current rule 1602, but adding provision to clarify that the presiding may appoint additional members to the ADR committee.
9.	1580.3	Tina Rasnow Coordinator Superior Court of Ventura County	AM	N	Rules 1580.3: Perhaps the ADR committee should include a member of the court staff or attorney coordinator who deals with self-represented litigants (SRLs) through self-help centers. These people will be using ADR procedure and their perspective should probably be considered in decision-making as to how the ADR program operates. Rule 1603(b)(4) mentions the importance of meeting community needs. This supports the inclusion of SRL interests.	See response to Mr. Love's comments above.
10.	1580.3 (b)(3)	Mr. Saul Bercovitch The State Bar of California ADR Committee	AM	N	Proposed Rule 1580.3(b)(3) The rule as proposed states in part those members of the ADR committee "must" serve for terms of two years. The ADR committee recognizes that this rule is based upon current rule 1603, and that the Judicial Council has been replacing "shall" with "must" in the rules. This imperative	Recommend amending rule as follows: (3) <u>ADR committee membership is for a two-year term</u>. The members ~~of the ADR committee must serve for terms~~

	Rule	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
					does not, however, appear to allow for shorter service, e.g., by resignation. The ADR committee believes the rule should be redrafted to allow for that possibility.	~~of two years,~~ may be reappointed, and may be removed by the presiding judge.
11.	1580.3 (b)(4)	Mr. Robert Gerard President Orange County Bar Association	AM	Y	Under rule 1580.3(b)(4) the powers of the ADR committee should include not only administration of the court's judicial arbitration program, but also administration of "all other ADR programs and procedures adopted by the Court"—this will make the rule consistent with the expressly broadened powers of the ADR committee.	Agree in concept. Recommend amending rule as follows: (4) The ~~powers of the~~ ADR committee is responsible for overseeing the court's alternative dispute resolution programs for general civil cases, includeing those ~~powers~~ responsibilities relating to the court's judicial arbitration program specified in rule 1603(b).
12.	1601(a)	Mr. Saul Bercovitch The State Bar of California ADR Committee	AM	Y	The ADR committee understands that these provisions are intended to parallel Code of Civil Procedure section 1141.11, as proposed to be amended by AB 1712. There is, however, some inconsistency, which could be cured by adding the word "unlimited" to proposed rule 1601(a)(1), before "civil cases."	Agree with proposed amendment.
13.	1601 (a)(3)	Richard L. Haeussler Haeussler & Assoc.	AM	N	I believe that proposed rule 1601(a)(3) which allows limited civil trial courts to exempt them from arbitration, is inconsistent with the idea that arbitration enhances the resolution of cases. With the proposal that the jurisdiction of limited civil courts be increased to $50,000 I would believe that many more motor vehicle collision cases will be filed in limited jurisdiction courts.	No amendment recommended. The language used is the same as the language of existing rule 1600(e) and is consistent with Code of Civil Procedure section 1141.11(c) which makes application of judicial arbitration in limited civil cases

	Rule	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
						a matter for the court to determine by local rule.
14.	1601(a)(4)	Richard L. Haeussler Haeussler & Assoc.	AM	N	This comment relates to present rule 1600(b) and 1600(e). A judicial officer in an Orange County limited jurisdiction court has indicated that a PLAINTIFF'S ELECTION TO ARBITRATE, under rule 1600(b), is subject to the provisions of rule 1600(e) and that arbitration will be denied unless the local limited jurisdiction court has adopted a rule which allows for arbitration under the provisions of 1600(e). I have always been of the opinion that rule 1600(b) implements CCP 1141.12(b)(ii) was designed to require arbitration of ANY CASE in which the plaintiff[s] have filed an election, after the case is at issue. Since proposed rule 1600(a)(5) carries forward much of the same language, it should be made clear if it is the intent of the Judicial Council to allow local limited jurisdiction courts to decline to arbitrate cases in which the plaintiff[s] file an election. I believe that the rule is clear but it appears that others have an entirely different interpretation. I would have the rule state: ". . . (5) Upon the filing of an election by all plaintiffs, any case in either a limited or unlimited civil court, without regard to any local rule, in which each plaintiff agrees that the arbitration award will not exceed $50,000 as to that plaintiff. . ."	Recommend amending proposed rules 1601(a)(4) and (a)(5) as follows: (4) Upon stipulation, any <u>limited or unlimited civil</u> case in any court, regardless of the amount in controversy; and (5) Upon filing of an election by all plaintiffs, any <u>limited or unlimited civil</u> case in any court in which each plaintiff agrees that the arbitration award will not exceed $50,000 as to that plaintiff. Do not recommend adding a provision regarding submission of such cases "without regard to any local rule." Under Government Code section 68070, courts can only adopt local rules that are "not inconsistent with law or with the rules adopted and prescribed by the Judicial Council." The additional

	Rule	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
						suggested language is therefore unnecessary and might imply general local rule-making authority that exceeds that specified in section 68070.
15.	1601 (a)(5)	Richard L. Haeussler Haeussler & Assoc.	AM	N	I would suggest that rule 1601(a)(5)'s last four words be changed to ". . . as to each plaintiff."	No amendment recommended. Suggested change might be read to require a plaintiff to agree to limitation on award of other plaintiffs, which does not seem appropriate.
16.	1601 (a)(6)	Richard L. Haeussler Haeussler & Assoc.	AM	N	3. In light of the proposed provisions of AB 1712, section 11 which amends CCP 1141.11(d)(1) to require that all motor vehicle collision cases [without regard to jurisdictional limit] be submitted to arbitration, I would recommend that a specific provision be made without regard to jurisdictional limit that requires all limited and unlimited courts to refer motor vehicle accident cases to arbitration unless the court determines that the case is worth more than $50,000. A. I would point out that under proposed rule 1580.3, that "each trial court" must designate . . . [a court employee] as ADR Program Administrator. Further, with trial court consolidation I believe that there will be very few superior courts statewide that do not have 18 judges when limited and unlimited judges are counted. Therefore it would seem that ALL TRIAL COURTS will have an ADR committee, and an ADR program. I would suggest that a 1601(a)(6) be added to the following	No amendment recommended. Code of Civil Procedure section 1141.11(d) requires the arbitration of *limited* civil cases of this type where the court has opted to provide by local rule for judicial arbitration in limited civil cases. This would not be changed by AB 1712. Recommend that the rules should continue to track the statutory application provisions.

	Rule	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
					effect: (A)(6) Motor vehicle Collision Cases: All motor vehicle accident case in limited or unlimited courts, shall be referred to arbitration within 120 days of the filing of the defendant's answer, unless the court determines that the case is not amendable to arbitration under [proposed] rule 1601(b)(6).	
17.	1602(a)	Mr. Saul Bercovitch The State Bar of California ADR Committee	AM	Y	1602(a) provides that when parties stipulate to arbitration, such stipulation must be filed no later than the time the initial case management statement is filed. Proposed rule 1605(a) permits parties to stipulate to an arbitrator who is not on the court's arbitration panel. The ADR committee proposes that, in a case where the parties stipulate to arbitration, the rules provide for the filing of the stipulation to a non-panel arbitrator, at the same time as the filing of the stipulation to arbitrate.	Agree that the rules should specify the timeframe for filing a stipulation to a non-panel arbitrator. Recommend that this be specified in rule 1605 below. However, recommend that the time frame for stipulating to a non-panel arbitrator be 10 days after placement on the arbitration hearing list in both cases ordered to arbitration and those that stipulate to arbitration. This gives parties time to agree to arbitrator while not delaying court selection process in the absence of such an agreement.
18.	1602(b); 1602(c), 1602(d)	Richard L. Haeussler Haeussler & Assoc.	AM	N	For internal consistency, I would recommend that reference to a "Plaintiff's Election to Arbitrate" be referred to as an "election" rather than changing from "election" to "request" as occurs in Rule 1602(b); (c); (d). Therefore I would recommend that the word "election" be substituted for "request."	Agree. Recommend the following amendments to rules 1602(b) and (d): **(b) [~~Requests~~ Plaintiff election for arbitration]** Upon

	Rule	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
						written ~~request~~ election of all plaintiffs to submit a case to arbitration, the case must be set for arbitration forthwith, subject to a motion by defendant for good cause to delay the arbitration hearing. The ~~request~~ election must be filed no later than the time the initial case management statement is filed, unless the court orders otherwise. **(d) [Case management conference]** Absent a stipulation by the parties or ~~a request~~ an election by all the plaintiffs to submit to arbitration.
19.	1602(d)	Mr. Saul Bercovitch The State Bar of California ADR Committee	AM	Y	A number of courts, at the case management conference, will give the parties the option to choose an alternative to arbitration, usually mediation. The ADR committee believes the rule should be revised accordingly.	No amendment recommended. This rule relates to the procedures for assignment of cases to the judicial arbitration program, not ADR referrals in general. In addition, many courts do not offer ADR programs other than judicial arbitration.
20.	1604	Richard L. Haeussler Haeussler & Assoc.	AM	N	Under proposed rule 1604, each court is required to maintain its own list of arbitrators. In Los Angeles County, all of the	No amendment recommended. The panels referred to in the

	Rule	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
					branch court arbitration offices are connected by the Internet to the arbitration office in the Central District, and the Central District panel of arbitrators is available online. Therefore, each branch court does not have to maintain its own panel as presently implied by the proposed rule; would therefore suggest that an addition be made to allow for such a procedure.	rule relate to panels with expertise in different types of cases.
21.	1604(b)	Richard L. Haeussler Haeussler & Assoc.	AM	N	I agree with the proposal to allow inactive members of the state bar to be members of the arbitration panels.	No response required.
22.	1604(b)	Mr. Stephen V. Love Executive Officer Superior Court of California, County of San Diego	AM	N	We disagree that inactive members of the bar should be allowed to serve on arbitration panels because they may not be up-to-date on the latest rule and it is harder to administer due to problems that may be associated with inactive status.	No amendment recommended given minimal and evenly split views on this issue.
23.	1604(c)	Mr. Saul Bercovitch The State Bar of California ADR Committee	AM	Y	1604(c) — The ADR committee recommends that the second sentence be revised to read as follows: "The personal injury panel, to the extent feasible, must contain an equal number of those who usually represent plaintiffs and those who usually represent defendants."	Agree.
24.	1604	Mr. Saul Bercovitch The State Bar of California ADR Committee	AM	Y	This rule deals with the creation of panels of arbitrators. The ADR committee is concerned with a related issue, which it recognizes may be outside the scope of the currently-proposed amendments to the Judicial Arbitration Rules, and might properly be addressed in the context of some other set of rules. The ADR committee believes the issue is important, however, so it raises it here, at least initially. In certain courts, for example the Alameda County Superior Court, the application for appointment to the ADR panels (which includes judicial arbitration, mediation, neutral	Recommend that this be considered by the committee for possible future rules proposal.

	Rule	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
					evaluation, and private arbitration) provides, in part: "Even though I may not have specifically applied to the Judicial Arbitration panel, if appointed as an ADR provider I agree to serve as a judicial arbitrator in at least three (3) cases per year." The ADR committee is sensitive to the need for judicial arbitrators, but believes this particular approach has a potentially adverse impact on the pool of mediators. First, attorneys who wish to act as mediators only — and have no interest in acting as arbitrators — may choose not to participate in the ADR panel at all. Second, non-attorney mediators may be disqualified from participating in the ADR panel, because they could not act as arbitrators. The ADR committee therefore recommends that a rule be adopted that provides, in substance, that a person may not be required to serve on a panel of arbitrators as a condition of serving on any other court panel.	
25.	1605(a)	Mr. Saul Bercovitch The State Bar of California ADR Committee	AM	Y	Parties may wish to stipulate to a non-panel arbitrator after a court order to arbitrate, rather than a party stipulation to arbitrate, which is covered in rule 1602(a). The rules should provide for a specific time period to do this, after the court order.	Agree. Recommend the following amendment: **(a) [Selection by stipulation]** By stipulation, the parties may select any person to serve as arbitrator. <u>The stipulation to an arbitrator must be filed no later than 10 days after the case has been placed on the arbitration hearing list</u>. This time frame will give parties time to agree to

	Rule	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
						arbitrator while not delaying court selection process in the absence of such an agreement, which, under 1605(b), must begin 15 days after the case has been placed on the arbitration hearing list.
26.	1605(a)	Julie Setzer Court Manager Superior Court of California, County of Sacramento	AM	N	Disagree with amendments to rule 1605(a) allowing parties to stipulate to have someone who is not on the arbitration panel list arbitrate a case: Arbitrators are carefully screened by the arbitration committee before being placed on the list. If the court is responsible for paying arbitrators, they should be able to decide who sits on the arbitration panel list.	No amendment recommended. The ability to select a non panel arbitrator is not a new provision being proposed by these amendments. The authority exists in the current rules and appears to be contemplated by the judicial arbitration statutes.
27.	1605(b)(3)	Mr. Saul Bercovitch The State Bar of California ADR Committee	AM	Y	1605(3)(b) provides that if there are two or more parties on a side, they must join in the peremptory rejection of one of the proposed arbitrators. But it is possible that each party may have a reason under Code of Civil Procedure section 170.1 to disqualify different proposed arbitrators. Thus, implementation of this rule would either create an impasse or force one of the parties to initially accept an arbitrator who would otherwise be disqualified and then go through the disqualification process later – a procedure that would certainly delay the resolution of the case. The same problem would occur where one party believes that there is more than one arbitrator who may be disqualified under Code of Civil Procedure section 170.1. The ADR committee recommends the addition of the following sentence to this rule: "However,	No amendment recommended. Code of Civil Procedure section 1141.18 already provides for challenges under both Code of Civil Procedure sections 170.1 and 170.6.

	Rule	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
					any party may challenge an arbitrator upon any of the grounds set forth in Code of Civil Procedure section 170.1."	
28.	1605(b)(4)	Mr. Saul Bercovitch The State Bar of California ADR Committee	AM	Y	If the ADR committee's proposed addition to rule 1605(b)(3) is enacted, there is the possibility that there would be no names left on the list. The ADR committee therefore proposes the addition of the following sentence to this rule: "If no names are left, a new list will be mailed as provided in subdivision (b)(3)."	See response to comment 27 above.
29.	1605(c)	Mr. Saul Bercovitch The State Bar of California ADR Committee	AM	Y	The ADR committee believes the phrase "immediately following" in the last sentence creates a potential ambiguity, and recommends that it be replaced by a specific time period.	No amendment recommended. This is not new language; it is in current rule 1605.5. We have not heard from either courts or practitioners that this language has been problematic in practice.
30.	1605(d)	Mr. Saul Bercovitch The State Bar of California ADR Committee	AM	Y	The first sentence of the rule should be revised to state: "If the first arbitrator selected declines to serve or is disqualified under Rule 1606 . . ."	No amendment recommended. Rule 1606(d) already contains a provision outlining what happens when an arbitrator is disqualified: the ADR administrator must return the case to the top of the arbitration hearing list and must appoint a new arbitrator
31.	1606	Richard L. Haeussler Haeussler & Assoc.	AM	N	I believe that the provisions of proposed rule 1606 clearly sets forth the requirements for disqualification.	No response necessary.
32.	1608	Richard L. Haeussler Haeussler & Assoc.	AM	N	Proposed Rule 1608: I recently ran into a situation, which may be unique, but I have run into the situation. I would recommend that the arbitrator might change an arbitration date to any date within the time frames of rule 1607(c), upon	Not recommend making this amendment at this time. This appears to be a substantive change that both arbitrators

	Rule	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
					the written request of a party with notice to the other side and for good cause shown. In my most recent case, the plaintiff is a guest of the state prison system, and the defendant's counsel scheduled a deposition of the plaintiff at the plaintiff's place of incarceration. Upon appearance, the plaintiff refused to answer questions. The defendant wants to continue the arbitration, which I would be inclined to grant if within rule 1607(c), to allow the defendant to make its motion to the court. However, I am under a "no-continuance" direction from the court, and we are approaching the arbitration review hearing date. I would suggest that requiring the parties to go first to the arbitrator for a continuance would be appropriate. I would therefore add a provision to rule 1608 to allow a motion to the arbitrator for a continuance subject to the provisions of rule 1607(c).	and litigants might want to comment on. Staff therefore believes that this change should not be made without first being circulated for comment.
33.	1609	Tina Rasnow Coordinator Superior Court of Ventura County	AM	N	Rule 1609: Arbitrator's fees—insert reference to rule 1615(b) in subpart (a) so it reads: (a) **Filing of award or notice of settlement required.** The arbitrator's award, or notice of settlement, must be timely filed with the clerk of the court pursuant to rule 1615(b) before a fee may be paid to the arbitrator.	Agree in concept with this amendment, but suggest slightly different placement of the new language to avoid confusion about whether rule 1615(b) addresses notices of settlement: (a) **Filing of award or notice of settlement required.** The arbitrator's award~~, or notice of~~

	Rule	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
						~~settlement,~~ must be timely filed with the clerk of the court under rule 1615(b) or a notice of settlement must have been filed before a fee may be paid to the arbitrator.
34.	1609(b)	Craig R. McCollum Just Resolutions, LLC	AM	N	I also would hope that the courts make the ex-parte application process for obtaining fees in this event (rule 1609(b) as simple as possible (i.e., a submission of a single payment claim form with a declaration of the fact the case settled within the appropriate timeframe. Since the amount of the arbitrator's fee is small (usually $150–$200), to make the process too complex will have chilling effect on the process and ultimate ability to keep good arbitrators on the panel.	No amendment recommended. The procedures for filing a claim for arbitrator fees seem best addressed by the individual court.
35.	1610(b)	Mr. Saul Bercovitch The State Bar of California ADR Committee	AM	Y	The Civil and Small Claims Advisory Committee has asked for comments on whether this rule (former rule 1609) should be amended "to delete the authorization for ex parte communication for purposes of requesting a continuance." The ADR committee believes the exception should be eliminated entirely, thereby prohibiting ex parte communication for the purpose of scheduling the arbitration hearing, requesting a continuance, or otherwise. The reason is that some attorneys use the pretext of scheduling to discuss the merits of the case. In making this recommendation, the ADR committee understands that a written communication – whether by letter, e-mail, or other means – with a copy sent to the other side is not considered an ex parte communication. The Judicial Council may wish to consider defining "ex parte communication" for purposes of this rule, to avoid any potential ambiguity.	Recommend that rule 1610(b) be amended so that the standards applicable to judicial arbitrators more closely parallel the language of the Code of Judicial Ethics and the Ethics Standards for Neutral Arbitrators in Contractual Arbitration concerning ex parte communication: (b) ~~There must be no ex parte communication by counsel or the parties with the arbitrator or a potential arbitrator except for the purpose of scheduling~~

	Rule	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
						~~the arbitration hearing or requesting a continuance.~~ An arbitrator must not initiate, permit, or consider any ex parte communications or consider other communications made to the arbitrator outside the presence of all of the parties concerning a pending or impending arbitration, except as follows: (i) An arbitrator may communicate with a party in the absence of other parties about administrative matters, such as setting the time and place of hearings or making other arrangements for the conduct of the proceedings, as long as the arbitrator reasonably believes that the communication will not result in a procedural or tactical advantage for any party. When such a discussion occurs, the arbitrator must promptly inform the other parties of the communication and must give the other parties an opportunity

	Rule	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
						to respond before making any final determination concerning the matter discussed. (ii) An arbitrator may initiate or consider any ex parte communication when expressly authorized by law to do so.
36.	1610(b)	Mr. Stephen V. Love Executive Officer Superior Court of California, County of San Diego	AM	N	Rule 1610(b)—suggest that ex partes be allowed to schedule the arbitration but not to request a continuance.	See response to comments of Mr. Bercovitch immediately above.
37.	1613 (b)(1)	Richard L. Haeussler Haeussler & Assoc.	AM	N	Rule 1613: It appears that there are different interpretations of the provisions of rule 1613(b)(1) and (b)(2). In a recent arbitration, the arbitrator ruled that with respect to an expert to whom the plaintiff's counsel was attempting to SDT for the hearing, and who was evading service, that the plaintiff could have used the provisions of rule 1613(b)(2)(C) to obtain the testimony of the expert and that 1613(b)(1)(B) did not apply. I believe that this was clear error, but would suggest that the rule be clarified by adding language to 1613(b)(1)(B) to insure that the subpoena process applied only to the documents under 1613(b)(1). I would add an additional provision under rule 1613(b)(1) that a party may object to the conclusions of an expert's report if made in writing and delivers a written motion to exclude [in limine] all or part of the expert's report with a	These are issues that were not previously addressed in the amendments that were circulated for comment. For this reason, recommend that these issues be considered as possible future rule proposals.

	Rule	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
					memo of points and authorities 10 days in advance of the hearing.	
38.	1613 (b)(1)(A) (b)(2)(B) 1613(d)	Richard L. Haeussler Haeussler & Assoc.	AM	N	Under rule 1613(b)(1)(A); (b)(2)(B); (d) discusses the "delivery" of documents. Many parties use the procedure of proposing to introduce documents, which have previously been provided in the discovery process, and then do not provide a copy of the documents with the "Notice of Intent to Introduce Evidence." I recently was involved in a case where the defendant's counsel gave notice of intent to introduce certain subpoenaed records, which were foundational to the expert doctor's report, who had never examined the plaintiffs. A request for the records was made promptly upon receipt of the notice of intent. The defendant's counsel refused to provide the records, saying that it would be too costly for his client to have the records copied and delivered. The arbitrator allowed the expert's report to be introduced even though it was based upon records which should have been excluded for failure to comply with rule 1613(b)(1)(A).	See response to comments immediately above.
39.	1614(a)	Richard L. Haeussler Haeussler & Assoc.	AM	N	Rule 1614(a) grants broad powers to the arbitrator to conduct a hearing. I would suggest that an additional provision be added to allow the arbitrator to receive evidence upon such terms as are just in light of the circumstances of the case. In one of my cases, as indicated above, the plaintiff is in prison, and will not be available for the arbitration hearing. I have indicated that I will allow him to testify by means of a telephone conference call [at his expense] and to listen to the other party's presentation.	These are issues that were not previously addressed in the amendments that were circulated for comment. For this reason, recommend that these issues be considered as possible future rule proposals.

	Rule	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
					In another case, the plaintiffs had moved out of state, and had to come back to California, at an expense of over $1,000.00 in airfare and hotel expenses, to appear at the arbitration hearing. I believe that a telephone appearance would have been a lot less expensive.	
40.	1614(b)	Mr. Saul Bercovitch The State Bar of California ADR Committee	AM	Y	Subdivisions (1) and (3) and the title of this rule make reference to a "record", but subdivision (2) makes reference to "records.' The ADR committee recommends that subdivision (2) be amended to read as follows: "Any record~~s~~ of the proceedings made by or at the direction of the arbitrator ~~are~~ is deemed the arbitrator's personal notes and ~~are~~ is not subject to discovery, and the arbitrator must not deliver ~~them~~ it to any party to the case or to any other person, except to an employee using the record~~s~~ under the arbitrator's supervision or pursuant to a subpoena issued in a criminal investigation or prosecution for perjury."	Agree.
41.	1614(b)(3)	Tina Rasnow Coordinator Superior Court of California, County of Ventura	AM	N	Rule 1614(b)(3) was confusing because it prohibited any recording device except as expressly permitted by this rule, but the rule did not seem to permit any. Perhaps this could be better stated.	Agree. Recommend modifying last part of sentence as follows: No other record will be made, and the arbitrator must not permit the presence of a stenographer or court reporter or the use of any recording device at the hearing, except as expressly permitted by ~~this rule~~ (1).
42.	1615(a)(2)	Tina Rasnow Coordinator Superior Court of California,	AM	N	Rule 1615(a)(2) should encourage, but not require, the arbitrator to provide an explanation of the basis for the decision, particularly when one or more sides is self-represented.	These are issues that were not previously addressed in the amendments that were circulated for comment. For

	Rule	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
		County of Ventura				this reason, recommend that these issues be considered as possible future rule proposals.
43.	1615(c)	Richard L. Haeussler Haeussler & Assoc.	AM	N	Under rule 1615(c) there is no provision for the immediate entry of an award in a binding arbitration case or a case where the parties have agreed to waive their rights to a trial de novo request. I would suggest that the committee add a provision as 1615(c)(1)(B) that provides that the clerk must enter an award as a judgment immediately upon the filing of an award in a binding arbitration case or a case in which the parties have waived their right to a trial de novo.	These are issues that were not previously addressed in the amendments that were circulated for comment. For this reason, recommend that these issues be considered as possible future rule proposals.
44.	1617	Richard L. Haeussler Haeussler & Assoc.	AM	N	Rule 1617: I would delete the requirement of a "joint" request, and provide where the parties have not been able to select an arbitrator within a reasonable time, that ANY PARTY may request a panel of names. A friend was involved in a case where the parties agreed to binding arbitration, and then spent a year attempting to have an arbitrator selected. The first two arbitrators selected stated that they were no longer doing arbitrations even though they were on the court's list. The third declined to act. We finally got a list from ARC in Santa Monica, and were able to get an arbitrator selected about 11 months after the stipulation was entered into. If either party had been able to request a panel and if the selection process would then have been governed by rule 1605, the matter would have been resolved nine months earlier.	These are issues that were not previously addressed in the amendments that were circulated for comment. For this reason, recommend that these issues be considered as possible future rule proposals.